

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-TP-334
)	
Assondieu Fortune)	NAL/Acct. No.200332700007
4073 Coconut Circle North)	
Naples, Florida)	FRN 0007879570

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: November 18, 2002

By the Enforcement Bureau, Tampa Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Assondieu Fortune apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”).¹ Specifically, we find Assondieu Fortune apparently liable for the operation of an FM broadcast station on the frequency 105.9 MHz without Commission authorization.

II. BACKGROUND

2. On July 2, 2002, the FCC Enforcement Bureau’s Tampa Field Office (“Tampa Office”) received a complaint alleging that a pirate radio station was being operated from a residence located at 4073 Coconut Circle North in Naples, Florida. The Collier County, Florida Appraisal District lists the owner of the property at 4073 Coconut Circle North, Naples, Florida, to be Assondieu and Marie M. Fortune.

3. On July 16, 2002, agents from the Tampa Office investigated the complaint and, using direction-finding techniques, determined that a radio broadcast station on frequency 105.9 MHz was being operated from a residence located at 4073 Coconut Circle North in Naples, Florida. A two-bay FM broadcast-type antenna was mounted on a tower at the residence. Based on field strength measurements taken by the agents of the station’s signal, a Commission authorization was required to operate the station.² The agents inspected the station and interviewed the operator on duty. The property owner, Assondieu Fortune, was not present during the inspection but he met later with the agents for an interview. Mr. Fortune stated that the station had operated continuously from his residence for at least the past three months. Mr. Fortune stated that his wife Marie operated the station during the morning and afternoon shows, and that he himself also operated the station.

III. DISCUSSION

¹ 47 U.S.C. § 301.

² See 47 C.F.R. § 15.239(b).

4. Section 301 of the Act sets forth generally that no person shall use or operate any apparatus for the transmission of energy of communications or signals by radio within the United States except under and in accordance with the Act and with a license. On July 16, 2002, Assondieu Fortune operated radio transmitting equipment on the frequency 105.9 MHz without benefit of the required Commission authorization. In addition, based on his own admission and a citizen complaint, Assondieu Fortune had been operating the unlicensed station for at least three months prior to that date.

5. Based on the evidence before us, we find that on July 16, 2002, and for at least three months prior to this date, Assondieu Fortune repeatedly³ and willfully⁴ violated Section 301 of the Act by operating radio transmission apparatus without a license.

6. Pursuant to Section 1.80(b)(4) of the Rules,⁵ the base forfeiture amount for operating a radio station without a Commission authorization is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁶ Considering the entire record and applying the factors listed above, this case warrants a \$10,000 forfeiture.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁷ and Sections 0.111, 0.311 and 1.80 of the Rules,⁸ Assondieu Fortune is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 301 the Act by operating a radio station without Commission authorization.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Assondieu Fortune SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch,

³ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which applies equally to Section 503(b) of the Act, provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies equally to Section 503(b) of the Act, provides that “[t]he term ‘willful,’ when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵ 47 C.F.R. § 1.80(b)(4).

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. §§ 0.111, 0.311, 1.80.

Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

10. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

13. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Assondieu Fortune, 4073 Coconut Circle North, Naples, Florida 34104.

FEDERAL COMMUNICATIONS COMMISSION

Ralph M. Barlow
District Director
Tampa Field Office, Enforcement Bureau

Attachment

⁹ See 47 C.F.R. § 1.1914.